Supreme Court, U.S.
FILED
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No. 91-719

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1991

AL C. PARKE, WARDEN, - - - - Petitioner

versus

RICKEY HAROLD RALEY, - - - Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX

Counsel of Record
for Petitioner:

CHRIS GORMAN
Attorney General

IAN G. SONEGO
Assistant Attorney General

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Criminal Appellate Division
Capitol Building
Frankfort, Kentucky 40601
502-564-7600

Counsel of Record
for Respondent:

J. GREGORY CLARE
MULLOY, WALTZ, WETTER,
FORE & SCHWARTZ

First Trust Centre
Suite 700N
200 South Fifth Street
Louisville, Kentucky 40202

Petition for Certiorari filed October 30, 1991
Certiorari granted March 2, 1992

BEST AVAILABLE COPY

WESTERFIELD-BONTE CO., 619 W. KENTUCKY—P.O. BOX 3251, LOUISVILLE, KY.

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RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT
C-89-0756-L(A)

DATE	NR.	PROCEEDINGS
7/13/89		Applic. to proceed IFP tend.
9/19/89	1	ORDER (TAB) that Motion is granted and Petition is ordered filed. Respondent shall file an answer herein w/in 20 days from the date of entry of this order purs. to Rule 5, Gov. 2254 cases in the USDC. ccs: Pet., Resp., Atty. Gen., Comm. of Ky.
9/19/89	2	Complaint. Copies to all parties. w/memo in support
9/26/89		CERT mail retd. EX by CM 9/22/89 as to Attorney General.
9/26/89		CERT mail retd EX by CM 9/25/89 as to Al Parke, Warden.
10/04/89	3	ANSWER to habeas corpus petition w/ MEMO and attachments in support by resp. O/tend.
10/20/89	4	RESPONSE to Rule 5 answer to habeas corpus petition by petitioner.
1990		
01/05/90	5	ORDER (CMA) that w/in 20 days of dt of this order, Commonwealth shall provide Court w/cc of plea agmt forms executed by petitioner in connection w/his 1980 and 1981 convictions. rc: counsel and pro se pltf.
01/19/90	6	RESPONSE to 1/5/90 order by RESP.
03/15/90	7	MEMO (CMA) on request for writ. rc: couns and pro se pltf.

Relevant Docket Entries

DATE	NR.	PROCEEDINGS
03/15/90	8	JUDG (CMA) on memo this da that petition DENIED. Final and appeal, rc couns and pro se pltf.
03/21/90	9	NOTICE OF APPEAL by petr from order entered on March 15, 1990.
03/21/90	10	MOTION by petr. for cert. of prob. cause.
03/27/90	11	ORDER by (CMA) that mot. for cert of prob. causw be GRANTED cc: coun.
03/28/90		RECORD ON APPEAL FORWARDED TO USCA. cc: coun.

NOTATION REGARDING LOWER COURT OPINIONS

The opinions of the Kentucky Court of Appeals, United States District Court for the Western District of Kentucky, and United States Court of Appeals for the Sixth Circuit appear in the appendix to the petition for writ of certiorari and therefore pursuant to Rule 26.1 are not reproduced in this appendix.

THE COMMONWEALTH OF KENTUCKY

JEFFERSON CIRCUIT COURT

CRIMINAL DIVISION

79CR1214(2)

OCTOBER TERM A.D., 1979

THE COMMONWEALTH OF KENTUCKY
Against
RICKY HAROLD RALEY

Burglary I (Two Counts)	Burglary III
KRS 511.020 Class B Felony	KRS 511.040 Class D Felony
10 to 20 years	1 to 5 years

The Grand Jurors of the County of Jefferson, in the name and by the authority of the Commonwealth of Kentucky, charge:

COUNT ONE

That on or about the 31st day of August, 1979, in Jefferson County, Kentucky, the above named defendant committed first-degree burglary by unlawfully entering or remaining in the dwelling of Ralph Calveard, with the intent to commit a crime.

COUNT TWO

That on or about the 31st day of August, 1979, in Jefferson County, Kentucky, the above named defendant committed first-degree burglary by unlawfully entering or remaining in the dwelling of Joe Goldman, with the intent to commit a crime.

COUNT THREE

That on or about the 31st day of August, 1979, in Jefferson County, Kentucky, the above named defendant com-

mitted third-degree burglary when he knowingly and unlawfully entered or remained in 5507 Mae Court, an uninhabited building, owned by Alden Goldsmith, with intent to commit a crime.

AGAINST THE PEACE AND DIGNITY OF THE COMMONWEALTH OF KENTUCKY.

A True Bill
(s) Ralph M. Brown
Foreman

WIT: Joe Goldman, 5509 Mae Court;
Alden Goldsmith, 5507 Mae Court
Ralph Calveard, 5506 Mae Court;

OFF: J. Clark, 0099; J. Hart, 1947, LPD

JEFFERSON CIRCUIT COURT

SECOND DIVISION

No. 79CR1214

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

RICKY HAROLD RALEY - - - - - *Defendant*

COMMONWEALTH'S RECOMMENDATION ON A PLEA OF GUILTY

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1. CHARGE(S): PENALTY:

Burglary I	10 to 20 yrs.
Burglary II	10 to 20 yrs.
Burglary III	1 to 5 yrs.

2. FACTS OF THE CASE:

Defendant was caught breaking into garages at three addresses on Mae Court. Tools, fishing equipment were taken.

3. RECOMMENDATIONS ON A PLEA OF GUILTY:

Amend Count 1 and 2 to Burglary III with a plea of guilty to three counts of Burglary III with a sentence of five years to serve on each count.

4. REASON(S) FOR AMENDED CHARGE(S):

Facts
warrant

5. AGREED TO THIS 29th DAY OF NOVEMBER, 1979:

Commonwealth's Recommendation on a Plea of Guilty

/s/ William T. McIntyre
Assistant Commonwealth's Attorney

Approved by Division Chief

x /s/ Ralph O. Calvert
Prosecuting Witness

Police Officer

Prosecuting Witness

Police Officer

/s/ Ricky Raley
Defendant

/s/ Thom A. Marshall
Attorney for Defendant

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of Jefferson Circuit Court
Tony Miller, Clerk
By /s/ L. Roberts D.C.

COMMONWEALTH OF KENTUCKY

30TH JUDICIAL DISTRICT

JEFFERSON CIRCUIT COURT

SECOND DIVISION

CR. NO. 79CR1214 - - - - - - - *Plaintiff*

v.

RICKY HAROLD RALEY - - - - - - *Defendant*

PLEA OF GUILTY

The Defendant above named respectfully represents to the Court as follows:

1. My full name is Ricky Harold Raley and I request that all proceedings against me be had in the name which I here declare to be my true name.

2. My age is 23; Birth Date: 8-30-56.

3. I have completed 11 years of school.

4. I can speak and understand the English language.

5. I am not under the influence of alcohol or narcotics at this time.

6. I have never been treated for any mental disease, nor have I ever been admitted to a mental hospital.

7. I am represented by counsel and the name of my lawyer is Thom Marshall.

8. I have received a copy of the Indictment* before being called upon to plead, and have read the Indictment

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*"Indictment" also includes "Information," as the case may be

and discussed it with my attorney and fully understand every charge made against me in this case.

9. I have told my attorney all the facts and surrounding circumstances as known to me concerning the matters. My attorney has since informed me and has counselled and advised with me at length as to the nature and cause of each accusation against me as set forth in the Indictment and as to any possible defenses I might have in this case.

10. My attorney has advised me as to the maximum punishment which the law provides for the offense charged in the Indictment, as follows: A maximum of 15 years imprisonment and a fine of $———— for the offense of Burglary 3rd (3) Charged in 79CR1214.

11. I understand that I may, if I so choose, plead "Not Guilty" to any offense charged against me, and that if I should choose to plead "Not Guilty" the Constitution guarantees me (a) the right to a speedy and public trial April, 1973

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Tony Miller, Clerk
By /s/ L. Roberts D.C.

by jury, (b) the right to see and hear all witnesses called to testify against me, (c) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor, and (d) the right to have the assistance of counsel for my defense at all stages of the proceedings.

12. I understand that if I plead guilty, I waive all of these rights, including the right of appeal.

13. I understand that I have a right not to incriminate myself, but I must waive this right if I plead guilty.

Plea of Guilty

14. I also understand that if I plead "GUILTY" the Court may impose the same punishment as if I had pleaded "NOT GUILTY", stood trial and been convicted by a jury and that the Court need not accept any recommendations as to sentence that may be made by the Commonwealth.

15. I understand that there can be no appeal from the Judgment of this Court.

16. I declare that no officer or agent of any branch of government (Federal, State or local) nor any other person, has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I would receive a lighter sentence, or probation, or any other form of leniency if I would plead "GUILTY".

17. I declare that no officer or agent of any branch of the government (Federal, State or local) nor any other person has used any force, duress or coercion to get me to plead "Guilty" or told me that I would receive a heavier sentence or been denied consideration for probation if I pleaded "Not Guilty" and subsequently was found "Guilty".

18. I am satisfied with the advice and counsel which my attorney has given me, and there is nothing about the proceedings in this case against me which I do not fully understand.

19. I have had all the time that I wanted to confer with my attorney, and I do not need to confer with him any further before we proceed.

20. I know that the Court will not permit anyone to plead "Guilty" who claims to be innocent and, with that in mind and because I am "Guilty" and make no claim of innocence, I wish to plead "Guilty" and respectfully request the Court to accept my plea of "Guilty" and to have the

clerk enter my plea of "Guilty" as follows: (*) Guilty as charged in Counts 1, 2 and 3.

21. I declare that I offer my plea of "Guilty" freely and voluntarily and of my own accord and with full understanding of all the matters set forth in the Indictment and in this petition and in the certificate of my counsel which is attached to this petition.

Signed by me in open Court in the presence of my attorney this 29th day of November, 1979.

/s/ Ricky Raley
Defendant

April, 1973

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Of Jefferson Circuit Court
Tony Miller, Clerk
By /s/ L. Roberts D.C.

(*) The Defendant's plea of "Guilty" or "Not Guilty" as to each offense charged against him in the Indictment should be entered in the blank space provided in paragraph 20. If the Indictment charges but a single offense, the Defendant who wishes to plead "Guilty" should write in paragraph 20 "Guilty as charged in the Indictment." If more than one offense be charged, the Defendant may write in paragraph 20 the words: "Guilty as charged in Count _____ of the Indictment," etc. "Not Guilty as charged in Count _____, etc."

CERTIFICATE OF COUNSEL

The undersigned, as attorney and counsellor for the Defendant above named /s/ Ricky Harold Raley hereby certifies as follows:

1. That I have read and fully explained to the Defendant the allegations contained in the Indictment in this case.

2. That I have fully explained the Defendant's Constitutional rights to him.

3. That to the best of my knowledge and belief the statements and representations and declarations made by the Defendant in the foregoing petition are in all respects accurate and true.

4. That the plea of "GUILTY" as offered by the Defendant in paragraph 20 of the foregoing petition accords with my understanding of the facts as related to me by the Defendant and is consistent with my advice to the Defendant.

5. That in my opinion the plea "GUILTY" as offered by the Defendant in paragraph 20 of the foregoing petition is voluntarily and understandingly made, and I recommend to the Court that the plea of "GUILTY" be now accepted and entered on behalf of the Defendant as requested in paragraph 20 of the foregoing petition.

Signed by me in open Court in the presence of the Defendant above named and after full discussion of the contents of this certificate with the Defendant, this 29th day of November, 1979.

/s/ Thom A. Marshall
Attorney for Defendant

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Of Jefferson Circuit Court
Tony Miller, Clerk
By /s/ L. Roberts D.C.

JEFFERSON CIRCUIT COURT

CRIMINAL BRANCH
SECOND DIVISION

Indictment No. 79 CR 1214

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

RICKY HAROLD RALEY - - - - - *Defendant*

Representing the Commonwealth: Wm. McIntyre
Representing the Defendant: D. O'Brien or T. Marshall

These Proceedings Made of Record by Office Court Reporter: yes
The Defendant Having Executed Bail
Being Held In Lieu of Bail

ORDER

At a Court held: Nov. 29, 1979

Came the defendant(s) and counsel and withdrew his/their former plea(s) of not guilty and now pleads guilty to 3 cts of Burglary III.

By consent, the law and facts of this case were presented to the Court without the intervention of a jury; the Court being advised and, on recommendation of the Commonwealth's Attorney and, by agreement of the defendant in person and by counsel, finds the defendant(s) guilty per the plea(s) entered herein. Comes counsel and orally moves the Court to withhold the rendition of the judgment and to place the defendant(s) on probation or conditional

release. The Court not being advised, ordered said motion(s) be and is/are assigned to 1/3/80 @ 9am for filing of the pre-sentence investigative report and for the Court's ruling on said motion(s). It is ordered that the defendant(s) bond be increased to $10,000.00 and he is remanded to custody.

Attested: A True Copy
Paulie Miller, Clerk
By /s/ D.C.

/s/ Oldham
Judge

Certified Copy of Record
Of Jefferson Circuit Court
Tony Miller, Clerk
By /s/ L. Roberts D.C.

JEFFERSON CIRCUIT COURT

SECOND DIVISION

No. 79 cr 1214

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

RICKY HAROLD RALEY - - - - - *Defendant*

JUDGMENT OF CONVICTION AND SENTENCE

The defendant, Ricky Harold Raley, having this day appeared in open court with his attorney, Hon. D. O'Brien, and the defendant having requested a pre-sentence investigation report and it having been delivered to the Court and exhibited to the defendant and his counsel, and today the defendant and his attorney and the attorney for the Commonwealth appearing before the Court for the purpose of the Court's consideration of the pre-sentence investigation report of the defendant, and the Court's fixing of punishment and imposition of sentence upon the defendant; and the Court having duly considered the contents of the pre-sentence investigation report made of the defendant by the Probation Officer and having permitted the defendant and his counsel to review and fully acquaint themselves with the contents of said report in its entirety, and no request having been made by defendant or his counsel to controvert the factual contents or conclusions of the pre-sentence investigation report;

And

The Court having fully considered the possibility of probation and conditional discharge of the defendant and

after due consideration of the nature and circumstances of the crime and the history, character and condition of the defendant, the Court is of the opinion that imprisonment is necessary for the public because:

(a) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; and

(b) a disposition of the defendant by probation or conditional discharge will unduly depreciate the seriousness of the defendant's crime;

AND

The Court having inquired of the defendant and his counsel whether they had any legal cause to show why judgment and sentence should not be pronounced against the defendant; further, the Court having afforded the defendant and his counsel an opportunity to make statements in the defendant's behalf and to present any information in mitigation of the punishment and no legal cause having been shown why judgment and sentence should not be pronounced against him; it is, therefore,

ORDERED AND ADJUDGED by the Court as follows:

That the defendant, Ricky Harold Raley, is guilty of the offense(s) of Burlary III, committed on 8/31/79, as charged in the Indictment and his punishment therefore is fixed at 5 years on each of 3 cts to run concurrently; accordingly, he is hereby sentenced to and ordered committed to the custody of Dept. of Corrections, for a term of 5 years and until released in accordance with the law.

It is further ORDERED AND ADJUDGED that the Sheriff of Jefferson County shall deliver the defendant to the custody of the Dept. of Corrections, at his earliest convenience at

such location within this state as the Department shall designate for the purpose of the defendant's executing the sentence imposed upon him hereunder, and the defendant is now remanded to the custody of the Dept. of Corrections, there to remain and be securely kept, until he can be transported to the custody of the Dept. of Corrections, as hereinbefore provided.

ENTERED this 3 day of January, 1980.

Seen And Notice Of Entry
Waived By:
Attorney for the Defendant
Attorney for the Commonwealth

Oldham
Judge, Jefferson Circuit Court

Filed and Notice of Entry given,
this the 3rd day of January, 1980.

P. Miller, Clerk.
By: A. Darnice?? D.C.

JEFFERSON CIRCUIT COURT

LOUISVILLE, KENTUCKY

79CR1214-2

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

RICKY HAROLD RALEY - - - - - *Defendant*

JUDGMENT—January 3, 1980

On Indictment No. 79CR1214-2

On the charge of _____

Cts 1, 2, 3 Burglary III

COURT COSTS $50.00

Said Sentence Shall Run In Accordance With The Provisions Of KRS 533.060, If Applicable

The defendant was this day brought into court, was asked if he had any legal cause to show why judgment should not be pronounced against him; upon advice of counsel, none being shown, it is adjudged that the defendant, being 23 years of age, be taken by the Sheriff of Jefferson County, to the jail of Jefferson County and from there by the Sheriff or said County transferred to the custody of the Department of Corrections and to remain in their custody for the period of not more than 5 years each Ct. co years or _____. The Sheriff or said County shall transfer the defendant to the custody of the Department at such location as the Department shall designate.

(If this sentence is to run concurrently or consecutively with any other sentence, please complete the following).

Judgment

This sentence is to run concurrent with the sentence(s) of Indictment No. 79CR1214 of the Jefferson Circuit Court.

I, Paulie Miller, Clerk of the Jefferson Circuit Court, do certify the foregoing judgment is a true and correct copy of the judgment in the above styled case, entered on January 3, 1980, in the Circuit Court 2 Circuit Court and spread upon the Order Book at page ——.

Witness my hand as Clerk of the Jefferson Circuit Court this Jan. 3, 1980.

Certified Copy of Record
Of Jefferson Circuit Court
Tony Miller, Clerk
By D.C.

Paulie Miller Circuit Court Clerk
By: /s/ N. E. Kirken

JEFFERSON CIRCUIT COURT

DIVISION EIGHT

No. 81CR0269

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

RICKY HAROLD RALEY - - - - - *Defendant*

COMMONWEALTH'S RECOMMENDATION ON A PLEA OF GUILTY

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1. CHARGE(S)	PENALTY:
Burg. III	1-5 yrs
PFO II	Indeterminate
Complicity	
RSP o/100	1-5 yrs

2. FACTS OF THE CASE:

Defendant participated in the burglary of the Leatherhead Shop on Jan. 6, 1981. Approximately $3,000 worth of clothing was taken.

3. RECOMMENDATIONS ON A PLEA OF GUILTY:
PG Burg III - 5 yrs. enhanced to 5 yr on PFO II; Dism Complicity & RSP o/100.

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Of Jefferson Circuit Court

/s/ Tony Miller
By M. Ballard D.C.

Commonwealth's Recommendation on a Plea of Guilty

4. REASON(S) FOR AMENDED CHARGE(s):

5. Agreed To This 8th Day of October, 1981:

/s/ Grimes

Assistant Commonwealth's Attorney

Approved by Division Chief

/s/ CW O'Brien

Prosecuting Witness — Police Officer

/s/ Charles N. Jones

Prosecuting Witness — Police Officer

/s/ Ricky Raley — /s/ Thomas E. Clay

Defendant — Attorney for Defendant

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Of Jefferson Circuit Court
/s/ Tony Miller
By /s/ M. Ballard D. C.

JEFFERSON CIRCUIT COURT

DIVISION EIGHT

Indictment No. 81 CR 0269

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

RICKY HAROLD RALEY - - - - - *Defendant*

Representing the Commonwealth: William Grimes

Representing the Defendant: Thos. Clay

Official Court Reporter: Margie McKinley

The Defendant Having Executed Bail XXX

Being Held in Lieu of Bail _____

ORDER

At a Court held: October 8, 1981 comes the Defendant, in person and by counsel, and withdraws the former plea of not guilty and now pleads guilty to Count I - Burglary III recmds 5 yrs and to Count XI PFO II enhanced to 5 yrs PFO II. By consent, the law and facts of this case were presented to the court without the intervention of a jury; the court, being advised, on the recommendation of the Commonwealth's Attorney, and agreed to by the defendant, in person and by counsel, finds the defendant guilty as per the plea and fixes punishment at Five years in the penitentiary. Comes the Defendant, in person and by counsel, and orally moves the Court to withhold the rendition of the judgment herein; the court, not being advised, ordered that

this motion be and is passed to October 29, 1981 9:15 am for filing of the presentence report and ruling on said motion. IT IS ORDERED by the Court that the defendant may remain on same bond of $5000.00 10%

(s) Henry D. Hopson
Henry D. Hopson, Judge

JEFFERSON CIRCUIT COURT

DIVISION EIGHT

No. 81 CR 0269

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

RICKY HAROLD RALEY - - - - - *Defendant*

JUDGMENT AND CONVICTION AND SENTENCE

The Defendant, Ricky Harold Raley having this day appeared in open court, with his attorney, Thos. Clay and Larry Simon having appeared as attorney for the Commonwealth for the purpose of the Court's consideration of the pre-sentence investigation report of the Defendant, and the Court's fixing of punishment and imposition of sentence upon the Defendant, and the Defendant having heretofore on October 8, 1981 entered into a plea of guilty, and the Court having duly considered the contents of the pre-sentence investigation report made of the Defendant by the Probation Officer and having permitted the Defendant and his counsel to review and fully acquaint themselves with the contents of said report in its entirety:

AND

The Court having fully considered the possibility of probation and conditional discharge of the Defendant and after due consideration of the nature and circumstances of the crime and the history, character and condition of the Defendant, the Count is of the opinion that imprisonment is necessary for the public because:

Judgment and Conviction and Sentence

(a) The Defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution.

AND

(b) A disposition of the Defendant by probation or correctional discharge will unduly depreciate the seriousness of the Defendant's crime:

AND

The Court having inquired of the Defendant and his counsel whether they had any legal cause to show why judgment and sentence should not be pronounced against the Defendant, further the Court having afforded the Defendant and his counsel an opportunity to make statements in the Defendant's behalf and to present any information in mitigation of the punishment and no legal cause having been shown why judgment and sentence should not be pronounced against him in accordance with his/her Plea of Guilty.

IT IS THEREFORE ORDERED AND ADJUDGED by the Court as follows:

That the Defendant, Ricky Harold Raley is guilty of the offence(s) of Burglary III enhanced to PFO II Complicity and RSP over $100.00 dismissed committed on or about January 6, 1981, as charged in the indictment and his punishment therefor is fixed at Five Years in the penitentiary, he/she is hereby sentenced and ordered committed to the custody of Kentucky Department of Corrections, for a term of Five Years, on said count(s), and until released in accordance with the law.

IT IS FURTHER ORDERED AND ADJUDGED that the Sheriff of Jefferson County shall deliver the Defendant to the custody of the Jailer of Jefferson County, at his earliest convenience at such location within this state as the Depart-

ment shall designate for the purpose of the Defendant's executing the sentence imposed upon him/her hereunder, and the Defendant is now remanded to the custody of the Jailer of Jefferson County, there to remain and be securely kept until he can be transported to the custody of the Kentucky Department of Corrections as hereinbefore provided.

IT IS FURTHER ORDERED by the Court that the court costs of $50.00 be paid on or before the Defendant's release.

Entered this 29th day of October, 1981.

(s) Henry D. Hopson
Henry D. Hopson, Judge

JEFFERSON CIRCUIT COURT

LOUISVILLE, KENTUCKY

No. 81CR0269-8

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

RICKY HAROLD RALEY - - - - - *Defendant*

JUDGMENT—October 29, 1981

On Indictment No. 81CR0269-8
On the charge of———————
Burglary III enhanced to PFO II
5 years

The defendant was this day brought into court, was asked if he had any legal cause to show why judgment should not be pronounced against him; upon advice of counsel, none being shown, it is adjudged that the defendant, being 23 years of age, be taken by the Sheriff of Jefferson County, to the jail of Jefferson County and from there by the Sheriff of said County transferred to the custody of the Department of Corrections and to remain in their custody for the period of not more than 5 years or———. The Sheriff of said County shall transfer the defendant to the custody of the Department at such location as the Department shall designate.

(If this sentence is to run concurrently or consecutively with any other sentence, please complete the following)

This sentence is to run ———————————
(concurrently / consecutively)
with the sentence(s) of Indictment No.———— of the Jefferson Circuit Court.

Judgment

I, Paulie Miller, Clerk of the Jefferson Circuit Court, do certify that the foregoing judgment is a true and correct copy of the judgment in the above styled case, entered on 29 October, 1981, in the Circuit Court 8 Circuit Court and spread upon the Order Book at page ——— Witness my hand as Clerk of the Jefferson Circuit Court this October 29, 1981.

——————— Circuit Court Clerk

By: /s/ ——————————— —D. C.

JEFFERSON CIRCUIT COURT

FIFTEENTH DIVISION

No. 86-CR-0796

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

RICKEY RALEY - - - - - - - *Defendant*

TRANSCRIPT OF PROCEEDINGS ON DEFENDANT'S PLEA OF GUILTY

HEARD BEFORE the Honorable Benjamin Shobe, Judge, on the Twenty-Eighth day of May, 1987.

For the Commonwealth: David Bybee
For the Defendant: Mark Wettle

The Court: The Court has before it Indictment No. 86-CR-0790, Commonwealth of Kentucky versus Rickey Harold Raley. Mr. Raley is charged with Robbery in the First Degree, Persistent Felony Offender in the First Degree, and Mr. Wettle, you represent him, do you not?

Mr. Wettle I do, Your Honor.

The Court: And, is he the gentleman standing to your left?

Mr. Wettle: He is, Your Honor.

The Court: Mr. Bybee, you

represent the prosecution, do you, sir?

Mr. Bybee: I do.

The Court: And, is there a negotiated settlement of the case, sir?

Mr. Bybee: Yes, there is.

The Court: May I know its terms, sir?

Mr. Bybee: Yes, sir. Mr. Raley is charged with Robbery, One and PFO, One. The Commonwealth has agreed to amend the Robbery, One to Robbery, Two, and recommend five (5) years, and then increase the Robbery, Two charge to PFO, One, ten (10) years.

The Court: All right, sir. Is that the agreement, sir?

Mr. Wettle: Yes, Your Honor. We're entering our plea. It's a conditional plea pursuant to RCR 809, but reserving the right to appeal the determination of this Court in regards to our motion on the PFO.

The Court: All right, sir. The agreement between the prosecution and the defense as to the disposition of this case is accepted by the Court. You have, of course, advised your client of his rights?

Mr. Wettle: Yes, Your Honor.

The Court: As a matter of fact, you've signed a certificate to that effect, have you not,

3

sir?

Mr. Wettle: I've signed many of them, Judge, and I've signed that one.

The Court: And this one, you did not sign without really doing it, without really advising him?

Mr. Wettle: I did, Your Honor.

The Court: All right. Is he sufficiently advised of the circumstances to discuss his plea with the Court?

Mr. Wettle: In my opinion, he is, Judge.

The Court: All right, sir. How does he now wish to plead?

Mr. Wettle: Your Honor, in conformity and in reliance upon the Commonwealth's recommendations, Mr. Raley wishes to change his former pleas of not guilty to guilty.

The Court: All right. Mr. Raley, you've heard — excuse me just one second.

(OFF THE RECORD.)

The Court: Mr. Raley, you've heard your attorney say to me that he's advised you of your rights —

The Defendant: Yes, sir.

The Court: And I believe he

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has.

The Defendant: Yes, sir.

The Court: And, you've filed with the Court, have you not, a Waiver of further proceedings with a petition to enter a plea of guilty?

The Defendant: Yes, sir.

The Court: And you acknowledge here in open court, do you, sir, that this is your signature?

The Defendant: Yes, sir.

The Court: And, the statements —

The Defendant: Yes, sir.

The Court: — statements on this form are your statements?

The Defendant: Yes, sir.

The Court: All right, sir. I see by this form, for example, that you're thirty years old and your social security number is 403-84-9470, is that correct?

The Defendant: Yes, sir.

The Court: And, you've completed eleven years of school?

The Defendant: Yes, sir.

The Court: All right, sir, and your age at the commission of the offense charged in the Indictment was twenty-nine. Is that correct, sir?

The Defendant: Yes, sir.

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The Court: All right, sir, and your lawyer has told you that the maximum punishment which the law provides for the offense charged in the Indictment is twenty (20) years imprisonment?

The Defendant: Yes, sir.

The Court: All right, and various other matters that are included herein, these are your answers, your statements?

The Defendant: Yes, sir.

The Court: All right, sir. You're not now under the influence of alcohol, narcotics or drugs?

The Defendant: No, sir.

The Court: And, you don't suffer any mental disability of any type, do you, sir?

The Defendant: No, sir.

The Court: You've never been treated by a doctor for any mental disease or disorder?

The Defendant: No, sir.

The Court: And, you've never been a patient in a mental institution, is that correct?

The Defendant: Yes, sir.

The Court: All right, sir. It becomes the duty, then, of the Court to advise you that you have a right to remain silent. You don't have

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to say anything which would tend to incriminate you. Further, you have a right to confront or to see, hear and have cross examined any witnesses who might appear

against you at trial. You have a right to a jury trial. You do not have to plead guilty. If you should elect to plead not guilty, then, before you can be found guilty, the Commonwealth would have the burden of proving that you're guilty beyond a reasonable doubt to the satisfaction of a jury. You have a right to bring witnesses to Court to testify on your own behalf, and if — to use the processes of the Court to require those witnesses to be present. If you plead guilty, however, you give up these rights. Do youn understand that, sir?

The Defendant: Yes, sir.

The Court: Do you have any questions you want to ask me about that?

The Defendant: No, sir.

The Court: All right, sir, if you plead guilty and get a sentence from the Court by virtue of pleading guilty on that particular Count 1 of this Indictment, is what we're talking about right now, the Robbery charge, if you plead guilty, you can't appeal that to another court or to another judge. Do you understand that, sir?

The Defendant: Yes, sir.

The Court: The Court understands that you have reserved certain rights to appeal

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the Persistent Felony Offender determination, which we had here in a prior hearing to determine the validity of your prior pleas of guilty. I understand that.

The Defendant: Yes, sir.

The Court: But, you understand that you can't appeal the conviction of Robbery in the Second Degree, I believe, is what you're pleading guilty to. Do you understand you can't appeal that?

The Defendant: Yes, sir.

The Court: All right, if you plead guilty to it. All right, sir, then the Court is informed that this act was committed when you — it says you robbed Bertha Kild by taking her purse by force. You understand that that's the charge against you?

The Defendant: Yes, sir.

The Court: All right, sir, and is that what you're pleading guilty to?

The Defendant: Yes, sir.

The Court: Is that because you are guilty of it?

The Defendant: Yes, sir.

The Court: Not because of any promises that have been made to you, not because of any threats that have been made against you, but simply because you are guilty?

The Defendant: Yes, sir.

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The Court: All right. Are you satisfied with the advice which you've received from your attorney?

The Defendant: Yes, sir.

The Court: Do you feel that Mr. Wettle has given your case his consideration and time and has done whatever he could in your behalf?

The Defendant: Yes, sir.

The Court: All right, sir. Do you have any complaints about this proceeding?

The Defendant: No.

The Court: All right. You know, of course, that this sentence is a sentence which you will have to serve, assuming that — You have to serve it if you're pleading guilty to being a Persistent Felony Offender, under these circumstances, even though that possibility could be changed?

The Defendant: Yes, sir.

The Court: You understand that the sentence being given to you now is a sentence to serve?

The Defendant: Yes, sir.

The Court: All right, sir. Do you still want to plead guilty?

The Defendant: Yes, sir.

The Court: All right. The Court determines, then, that the Defendant's determination

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to plead guilty is made intelligently and with full knowledge of the nature and consequences of his plea. Therefore, sir, your plea of guilty is accepted. May I know your birthdate?

The Defendant: 8-30-56.

The Court: All right. Are there any motions which you wish to make, Mr. Wettle?

Mr. Wettle: Judge, at this time, since Mr. Raley is not eligible for probation, and he's currently serving — he is currently out at Lagrange, we would ask today to waive the pre-sentence investigation, waive the separate sentencing hearing and ask the Court to sentence Mr. Raley according to the Commonwealth's recommendation.

The Court: All right. Let me ask this gentleman. This is silent. The recommendation is silent as to whether or not this sentence is to be served concurrent or consecutive to any sentence which he is now serving.

Mr. Bybee: Well, he's a — was a parole violator, correct?

Mr. Wittle: Parole violator, that's correct Judge. He is now committed to do sentence.

Mr. Bybee: He was out on parole when this occurred, correct?

Mr. Wettle: Correct.

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Mr. Bybee: That means it has to run consecutively.

Mr. Wettle: Under my understanding of Kentucky law.

The Court: All right.

Mr. Wettle: We would ask, however, he was incarcerated solely on this charge for a number of months and we'd ask that the Department of Probation & Parole calculate credit time served.

The Court: We'll give him any proper credit for time served on this charge. However, the record shall not remain silent as to whether or not this sentence will be served concurrently or consecutively. It will be served consecutive to any parole violation which he is now serving. You understand that, sir?

The Defendant: Yes, sir.

The Court: All right. Now, you were about to tell me, then, I believe, that he wishes to be sentenced today. Is that correct?

The Defendant: Yes, Your Honor. I've explained to Mr. Raley the importance of a pre-sentence investigation and a separate sentencing hearing. Understanding that, he wishes to waive his right to the preparation of a PSI and to a separate sentencing hearing and be sentenced today.

The Court: All right. Do you

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understand, then, Mr. Raley, that the Court would be required to secure a pre-sentence report before sentencing you unless you ask me not to get it?

The Defendant: Yes, sir.

The Court: And, that it may contain some information which you would disagree with and this would be your

chance to correct it, that information. Nevertheless, you want to be sentenced today?

The Defendant: Yes, sir.

The Court: All right. Is there any reason then why sentence should not be pronounced?

Mr. Wettle: No, Your Honor.

The Court: Hearing none, it is the judgment of the Court you've pled guilty, sir, to Robbery in the Second Degree. The Court finds you guilty and fixes your punishment at five years (5) in the Kentucky Department of Corrections, enhanced to ten (10) years on the count charging you with being a Persistent Felony Offender in the Frist Degree, to which you have also pled guilty under the reservation made. You will be taken by the Sheriff to the Kentucky Department of Corrections to serve that sentence, subject to the laws of Kentucky, and with credit for any time that you've served in this case while awaiting its disposition. All right.

The foregoing proceedings on the Defendant's plea of guilty are a true and accurate copy hereof.

(s) W. Lee Spencer
W. Lee Spencer,
Official Court Reporter
Date 6-26-87

Transcript of Proceedings on Defendant's Plea of Guilty

COMMONWEALTH OF KENTUCKY
COUNTY OF JEFFERSON

I, PAULIE MILLER, Clerk of the Jefferson Circuit Court, do hereby certify that the foregoing Seventy (70) Pages constitute a full, true and complete Original Record in a certain cause entitled therein COMMONWEALTH OF KENTUCKY, Plaintiff, vs. RICKY HAROLD RALEY, Defendant No. 86 CR 0790.

I further certify the Transcript of Proceedings, heard May 28, 1987 and filed August 13, 1987 is hereby made a part of the record on appeal.

WITNESS my hand and official seal of said court this 14th day of August, 1987.

(s) Paulie Miller
Clerk Jefferson Circuit Court

JEFFERSON CIRCUIT COURT

DIVISION FIFTEEN

No. 86-CR-0790

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

RICKY RALEY, - - - - - - - - *Defendant*

TRANSCRIPT OF PROCEEDINGS

May 28, 1987

Louisville, Kentucky

W. Lee Spencer

Official Court Reporter

JEFFERSON CIRCUIT COURT

DIVISION FIFTEEN

No. 86-CR-0790

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

RICKY RALEY, - - - - - - - - *Defendant*

HEARD BEFORE the HONORABLE BENJAMIN SHOBE, Judge Jefferson Circuit Court, Division Fifteen, an May 28, 1987.

APPEARANCES

Counsel for the Plaintiff: Mr. David Bybee
Counsel for the Defendant: Mr. Mark Wettle

W. Lee Spencer
Official Court Reporter

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The Court: All right. In Indictment 86-CR-0790, Mr. Raley is charged with Robbery in the First Degree, and with being a Persistent Felony Offender in the First Degree. The Defendant has filed a motion for the — it's the motion to suppress prior convictions. The Commonwealth has presented to the Court a copy of a Final Judgment of the Jefferson Circuit Court in Indictment No. 81-CR-0269, wherein the Defendant was charged with Burglary in the Third Degree enhanced to Persistent Felony Offender in the Second Degree, and received a sentence of — enhanced by being a Persistent Felony Offender in the Second Degree — received a sentence of five (5) years on October 29th — entered on October 29th, 1981, also signed by the Judge of the Eighth Division, and do you recognize that signature on there?

Mr. Bybee: That would be Henry Hopson's signature.

The Court: Oh, it was Judge Hopson's signature. All right, and Indictment No. 79-CR-1214, a certified copy of the record, wherein the Defendant, Ricky Raley, on the 3rd day of January, 1980, by Judgment entered, signed by Judge Oldham of the Jefferson Circuit Court, found the

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Defendant guilty of Burglary in the Third Degree and fixed his punishment at five (5) years on each of three counts, to run concurrently. The Court, of course — these copies may be — are these copies? These are certified copies of the record, and they may be filed in this instance. Do you wish to enter these, Mr. Bybee —

Mr. Bybee: Yes, sir, I do.

The Court: — in the record as your evidence. I believe that then places the burden upon the Defendant to go forward.

Mr. Wettle: That's correct, Judge. Under — It's my understanding that the current case law regarding Persistent Felony Offender challenges in Kentucky, under both *Commonwealth* v. *Dunn* and *Commonwealth* v. *Gadd*, once the Commonwealth has submitted judgments, then there's the presumption under Kentucky law the judgments were correct, and therefore, the burden shifts to us to challenge any constitutional errors —

The Court: That's correct.

Mr. Wettle: — in the entrance of those judgments. We have previously filed a motion with this Court on November the 11th, which I believe the Court cited, a motion to dismiss Count

2 of the Indictment, and in that motion and writing, we cite the grounds why Indictment 81-CR-0269 and Indictment 79-CR-1214 are insufficient to reflect that Mr. Raley at those times entered a knowing and voluntary plea. At this time, we maintain under the Supreme Court of *Boykin v. United States* that both these cases contain silent records as to whether the Court entered into colloquy with Mr. Raley to ascertain whether his pleas were knowing and voluntary, and under Federal law, if these are constitutionally invalid. However, my understanding of the present Kentucky law is that Kentucky follows a totality of the circumstances standard, and therefore, we must sumbit some type of proof to establish that the plea — other than the fact that there is a silent record, to establish that these were not knowing and voluntary pleas, and therefore, to satisfy the burden of Kentucky law, we would call one witness and that would be Mr. Raley.

The Court: Come around, Mr. Raley.

The witness, RICKY RALEY, after having been first duly sworn, was examined and testified as follows:
(Direct - Mr. Wettle)

Q. Mr. Raley, for the record,

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would you just tell us your full name and where you're currently living?

A. My name is Ricky Harold Raley and I live at 426 Chickapee.

Q. And where are you presently residing at this time?

A. Kentucky State Reformatory.

Q. Okay, and is that in Lagrange, Kentucky?

A. Yes, sir.

Q. And, have you been a native of Jefferson County for most of your life?

A. Yes, sir.

Q. Where did you go to school?

A. Iroquois High School.

Q. And, what grade did you last finish at Iroquois High School?

A. The eleventh.

Q. And, what year was that?

A. Around '73, I believe, or 4.

Q. How old are you now?

A. Thirty.

Q. How old were you when you finished high shcool?

A. Around eighteen.

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Q. Taking you up to 1979, Mr. Raley, do you recall how old you were in 1979?

A. Around twenty-three, I believe.

Q. Previously to 1979, had you ever been arrested before?

A. Yes, sir.

Q. How many times had you been arrested before 1979?

A. Before '79?

Q. Yes.

A. Twelve - fifteen times for public intoxication.

Q. And for these arrests, the public intoxication, had you ever stood trial before 1979?

A. No, sir.

Q. Do you recall what the disposition of most of those public intoxication cases were?

A. A fine.

Q. In what court were these cases in, if you can recall?

A. It was in district. I really can't recall which specific ones.

Q. Do you ever recall an occasion when you were in District Court on P.I. cases, of the Judge informing you of anything when you entered any type
of plea?

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A. Just if I was under any toxicants or anything of that nature when I entered a plea of guilty.

Q. Anything else, can you recall?

A. No, sir.

Q. Did they ever impose a jail sentence upon you?

A. No.

Q. What were the amount of the usual fines that they would impose on you, if you recall?

A. Around $107.50, something like that.

Q. Taking you up to 1979, do you recall being in Division Two of Jefferson Circuit Court in 1979?

A. Yes, sir.

Q. Do you recall who the Judge was?

A. No, sir.

Q. Would the name, Richard Oldham, help?

A. Oh, yes, yes.

Q. Do you recall what you were in that Court for?

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A. Burglary, two counts. There's three counts of Burglary, total.

Q. Okay. Had you ever been in Circuit Court before this time?

A. No, sir.

Q. Had you ever been charged with a felony, before?

A. No,sir.

Q. Did you have a lawyer in this case in Division Two?

A. Yeah. Yes, sir.

Q. Do you recall what youd lawyer's name was?

A. He was a public defender.

Q. Can you recall if it was Thom Marshall? Does that name ring a bell with you?

A. I believe that's who it was, yeah, sounds familiar.

Q. Were you in custody on these charges up until — Did you have — Let me ask, first. Did you enter a guilty plea or did you have a trial?

A. I entered a guilty plea.

Q. Okay. Do you recall what day you entered that guilty plea?

A. No, sir.

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Q. Do you recall —

A. It was around January the 2nd or 3rd, I believe, of '79.

Q. Was Mr. Marshall still your attorney at this time?

A. Yes, sir.

Q. Did you have the same attorney throughout?

A. Yes, sir.

Q. And, did you remain in jail while you were awaiting trial?

A. Yeah. Yes, sir.

Q. How long were you in jail before trial, do you recall?

A. I came in, I believe it was, in August. Around four months, I'd say.

Q. The day you entered your plea, was your case set for trial that day, do you recall, or when was it set for?

A. I'm not really sure what it was set for. I would say it was set for trial day. I can't remember if it was normally set up for that.

Q. Do you ever remember discussing with Mr. Marshall entering a guilty plea?

A. Not until the Judge had read

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me out my charges and told me that the charges that I had could carry up to thirty-five or forty years, and so, Mr. Marshall there at the table had —

Q. Now, where is this occurring? Do you recall?

A. In the Court Room.

Q. Okay. Go on.

A. In front of the Judge's bench, and he told me that he probably would run all the charges together and give me a total of fifteen years and run them together, but there wasn't no guarantee. So —

Q. Was this Judge Oldham that told you that? Do you recall?

A. Yes, sir.

Q. Okay. Go on.

A. So, Mr. Oldham asked me how did I plea, and I told him "guilty". I made a plea of guilty, and he therefore said, "I sentence you to fifteen years to be served in Ken-

tucky State Reformatory", and then said he was going to run them concurrent, to give me a total of five years to serve.

Q. When Judge Oldham told you this, you could get up to thirty-five or forty years, did he explain to you how you could get up to thirty-five or forty years, or do you recall?

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A. No, he just said that my charges, the three Burglaries I had, could get up to that high. He didn't —

Q. Do you remember going over any papers with Mr. Marshall and Judge Oldham?

A. No, sir.

Q. Do you remember signing your name to anything?

A. Just that day that I pled guilty, that was —

Q. What do you recall you signed your name to?

A. A guilty plea for a total of five years.

Q. Okay. Do you recall reading over those papers?

A. No, I just — the part where they had my charges on it. That was all.

Q. Do you recall what the paper said besides what your charges were?

A. No.

Q. Do you recall if Judge Oldham told you anything?

A. Just asked me was that my signature and I said "Yes", and he wanted to know if I was

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forced by anyone or threatened or promised by anyone or under any intoxicants or medication while I was making that decision and I informed him that I hadn't been, and that's when he said "I therefore sentence you to fifteen years to run concurrent, to five years to serve in the Kentucky State Reformatory."

Q. Okay. Do you recall if he sentenced you that day or if you had a separate sentencing date?

A. That there was the sentencing day.

Q. Mr. Raley, before you entered this plea before Judge Oldham, had you ever had a trial of any sort?

A. No, sir.

Q. Before a Judge or before a jury?

A. No, sir.

Q. Had you ever attended a jury trial as a witness or a spectator?

A. No, sir.

Q. Had you ever seen an actual trial on TV or anything such as that?

A. Just a show, but I never paid that much attention to it, no.

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Q. Did they bring in a jury on this day? On the day you entered the plea, was there a jury there or anything?

A. No, sir.

Q. Or any jury selection begun before you pled guilty, if you can recall?

A. Not as I can recall, no.

Q. Do you recall the Judge informing you of any rights you might be giving up?

A. No, sir.

Q. Do you recall if Mr. Marshall informed you of any rights you might be giving up?

A. No, sir.

Q. Do you recall on any of your other pleas when you pled to P.I. in District Court and you received those fines, have any of those judges informed you that you had certain rights?

A. There were a few of them, I'd say. I could get up, say — I don't think it had anything to do with the rights. It was more or less I could get so many days in jail for this additional charge or something. That's about all.

Q. Did they explain anything else to you?

A. No.

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Q. What happened after you entered your plea and were sentenced?

A. In —

Q. In Division Two in 1979?

A. I had went down to Kentucky State Reformatory, and therefore, I went to Western Kentucky Farm Center.

Q. Okay, but you went to the Reformatory?

A. Yes, sir.

Q. Okay. Taking you up to 1981 when you entered your plea before Judge Hopson, do you recall that?

A. Yes, sir.

Q. That was in Division Nine of the Jefferson Circuit Court, is that right?

A. Yes, sir.

Q. And, do you recall what you were charged with in Division Nine in 1981?

The Court: This was Division Eight.

Q. I'm sorry. Division Eight. I'm sorry.

A. Burglary.

Q. Do you recall any other charges

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against you?

A. No, sir.

Q. And, were you indicted under a Persistent Felony Offender status?

A. I didn't know that.

Q. Did you have a lawyer?

A. Yes, sir.

Q. Who was your lawyer?

A. Thomas Clay.

Q. Did you hire Mr. Clay or was he appointed by the Court?

A. He was a hired lawyer.

Q. Do you recall when this was in 1981?

A. Sir?

Q. Do you recall when this was in 1981?

A. I believe it was in January.

Q. Can you recall when you entered your plea?

A. October, I believe.

Q. Were you in jail or out of jail up until the time when you entered your plea?

A. I was out of jail.

Q. Do you recall what this case

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was set for, the day you entered your plea? Was it set for anything besides your plea?

A. No.

Q. It wasn't set for trial or anything from what you know?

A. Not to my knowledge, it wasn't.

Q. Did you ever have any discussions with Mr. Clay regarding either a trial or the entry of a plea before you entered your plea in October?

A. No, sir.

Q. Mr. Raley, you said before that you didn't know about this PFO. Could you explain what you meant by that?

A. Well, when I came to court on the last court date, Mr. Clay and my father, and my brother-in-law and my girlfriend, we was out in the lobby in front of the Court Room and he come out and he said "They've got you indicted on Persistent Felony in the First Degree and Burglary." He said. "If you'll cop out to the PFO, Two, that they

would drop the PFO, One", which at that time, I didn't know that I had the PFO, One. So, I believe it was the prosecution, Mr Grimes, had came out in the lobby and told me, he says "I've got you before. Come on in. I'm going to get you again." Then, he stepped off. Then, Mr. Clay told him that he couldn't be — that,

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you know, that he was more or less harrassing his client. So, Mr. Grimes went back in the Court Room. So, then, Mr. Clay come back out. He entered the Court Room and came back out and had a paper, saying that if I would sign this, that I would — that he would — that the Judge would drop the charges down to Persistent Felony, Two, and it was just a five year sentence.

Q. Okay. Do you remember what type of sentence you actually received?

A. Five years.

Q. And, were you sentenced that day or was it passed?

A. It was passed. They give me, I think, it was close to thirty days to turn myself back in. It was on October 29th is when the final judgment was made.

Q. Okay. Now, do you remember on the day when you entered your plea if you signed any forms? Did Mr. Clay give you any forms to sign or did Mr. Grimes give you any forms to sign?

A. Only the form that he had brung out in the lobby for me to sign, stating that I would take the PFO, Two, the five years.

Q. Do you recall what that form said?

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A. No, sir.

Q. Do you recall if the Judge said anything to you?

A. After — He told me to remain out in the lobby and that when he needed me, he would come and get me and a few minutes passed and he came out and got me and we went in and the Judge called me before the bench, as well as Mr. Clay, and we stood in fromt of the bench and he held up the paper and asked me was this my signature and so on, and I said "Yes", and he wanted to know if I was forced or promised by anyone to make that decision, the same as the other Judge had said, and I said "No", and he said "So, in other words, you'e wanting to withdraw your plea of not guilty", and I says "Yes", and — but at that time, I didn't know that I was indicted on the PFO, One, until that day. I hadn't been informed of that until up to that day that I did — signed that paper saying that I would take the five years.

Q. Mr. Raley, in fact, you were indicted on the PFO, Two, do you know that now?

A. Sir?

Q. Do you know, in fact, that you were not indicted on PFO, One; you were indicted on PFO, Two?

A. I was?

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Q. Yes.

A. I didn't know that. They told me it was PFO, One. That's why I took the Two.

Q. Do you remember who told you that?

A. Mr. Clay.

Q. Do you know what the difference between PFO, One and PFO, Two was in 1979 and 1981?

A. I would say it's the same as now. The PFO, One, is ten, flat, and the PFO, Two, I think — you got up in a year, the same as you would an ordinary five sentence, unless it's enhanced.

Q. In dropping that PFO, One, did you think you were getting a good deal?

A. Yes, sir.

Q. Is that why you pled guilty?

A. Yes, sir.

Q. Do you remember if the Judge told you anything about what rights you had, specifically?

A. Just that I had the right to — let's see, what was it — that I had a right to a jury trial.

Q. Did he tell you anything else?

A. No, sir.

Q. Now, Mr. Raley, we've had

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discussions about this, haven't we, between ourselves? We've talked at least two times since you've been down at Lagrange, haven't we?

A. Yes, sir.

Q. Regarding this motion I filed on your behalf?

A. Yes, sir.

Q. And, you know what your rights are, don't you?

A. Yes, sir.

Q. The rights I've explained to you?

A. Yes, sir.

Q. Going back to 1979, did you know you had the right to a jury trial on any charge against you?

A. No, sir.

Q. Did you know you had the right to confront and cross examine witnesses?

A. No, sir.

Q. Did you know you had the right to remain silent and they would have to prove the case against you?

A. No, sir.

Q. Did you know that in 1981?

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A. No, sir.

Q. Mr. Raley, have you ever watched TV and seen trials on TV?

A. Occasions, but I never paid that much attention to them, no.

Q. What type of trials did you see on TV?

A. Maybe a little Perry Mason or something like that, but I don't pay that much attention to it.

Q. And how do those trial work? Can you tell us?

A. They always work out where Mr. Mason always wins. That's the best I've ever seen it. As far as any others —

Q. Did you ever see Mr. Mason pick a jury or anything like that?

A. No, sir.

Q. Did you ever see one of his clients not take the stand?

A. No, sir.

Q. You never saw one of his —

A. Not as I can recall. I don't ever pay that much attention to it. That's what I — I can't really say.

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Mr. Wettle: That's all the questions I have.

The Court: Cross examination, sir.

(Cross — Mr. Bybee)

Q. Mr. Raley, you finished the eleventh grade?

A. Yes, sir.

Q. You are able to read?

A. Sir?

Q. You are able to read?

A. Yes, sir.

Q. And, you're able to write?

A. Yes, sir.

Q. Would you say your reading is good, average, excellent?

A. Fair.

Q. Fair, Okay. When you got arrested in 1979, Mr. Marshall was appointed as your lawyer, correct?

A. Yes, sir.

Q. Was he your lawyer the full time?

A. I believe he was, yeah.

Q. So, you never had two lawyers

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on the case? Mr. Marshall was —

A. I think there was one that substituted on one court date before that, but other than that —

Q. We was there the whole time?

A. Sir?

Q. He was your lawyer the whole time?

A. Mr. Marshall was appointed my attorney, but there was one occasion where a substitute had came in, I believe, but it wasn't on the trial date. I think there was one instance where he had sent one of his associates from the public defender's office, or something.

Q. All right. Did you talk to Mr. Marshall?

A. Sir?

Q. Did you talk to Mr. Marshall? Did he come over and talk to you? Were you in jail the whole time?

A. He never come and talked to me except for in the Court Room.

Mr. Wettle: Judge, if I may interrupt at this time just a moment. If he's going to call Mr. Marshall, I don't think there's

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any reason to move for a separation, but if Mr. Bybee intends to call Mr. Marshall, since he's asking questions about Mr. Marshall, we would move for a separation of witnesses at this time.

Mr. Bybee: I may call Mr. Marshall, and the Commonwealth would like to exercise its right to have a witness present, sitting with counsel, and the Commonwealth would elect Mr. Marshall.

Mr. Wettle: But he'd have to shout from where he's sitting, Judge. If he wants to assist Mr. Bybee —

Mr. Bybee: Have him sit up there.

Mr. Wettle: And, I don't know what purpose another commonwealth attorney is going to be assisting Mr. Bybee. If Mr. Bybee needs help in the questions he needs to ask —

Mr. Bybee: Isn't that up to Mr. Bybee and not to defense counsel?

The Court: Mr. Marshall, of course, as all counsel, is an officer of the Court. We would ordinarily not exclude him.

Mr. Marshall: Your Honor, I'll go get a cup of coffee. That will solve that.

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The Court: Well, we'll not require him to be absent, but if he wants to go get a cup of coffee, he may do so.

Q. Mr. Raley, did —

The Court: The record may reflect that Mr. Marshall left the Court Room. Go ahead, sir.

Q. When you were arrested, you were arrested and spent all the time in jail prior to trial?

A. Yes, sir.

Q. How many times did you talk with Mr. Marshall?

A. Maybe three times, maybe.

Q. Well, where do you get that number?

A. Well, I went to Court at least three times, and that's the only time that I can recall ever talking to him.

Q. Well, that's not my question.

A. I don't recall talking to him at a visit, in a visiting booth or nothing like that.

Q. Are you saying that he didn't ever come and talk to you or you just can't remember if he ever came and talked to you?

A. I can't really recall if he did

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come and see me.

Q. Okay. So, it's possible that he could have come to see you, but you just don't remember?

A. Yes, sir.

Q. All right, so — but, you do remember that he did come and talk to you when you were in Court?

A. Yes, sir.

Q. At least those times you can remember?

A. Yes, sir.

Q. And of those times you can remember, you remember at least three times when he did come to Court and represented you, correct?

A. Correct.

Q. And at those times, you would talk to him, correct?

A. Yes, sir.

Q. And, he would inquire and you would tell him about your case, why you were there, correct?

A. Yes, sir.

Q. And you told him what it is that got you arrested, who else was there, what you were doing and the whole story, correct?

A. Yes, sir.

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Q. And you apprised Mr. Marshall of any available witnesses and any — your opinions about the facts of the case, correct?

A. Could you say that again, please?

Q. And you told Mr. Marshall your version of the facts and how you felt about the case, correct?

A. Yes, sir.

Q. Now, you came before Judge Hopson, correct?

A. Yes, sir.

Q. Or, excuse me, Judge Oldham?

The Court: '79 was Judge Oldham, wasn't it?

Q. '79.

A. '79 was Judge Oldham, yes, sir.

Q. And, Mr. Marshall made some agreement with the prosecutor in that case, correct?

A. I guess. I would say it was the prosecutor. As far as when I was sitting in the Court Room, I was sitting at the table and —

Q. Do you remember his name?

A. No, sir.

Q. You had been charged with Burglary, One — two counts of Burglary, One, and one count

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of Burglary, Three, correct?

A. Yes, sir.

Q. Okay. Burglary, One, is ten to twenty. Burglary, Three is one to five, correct?

A. Yes, sir.

Q. If you were max'd on everything you could have got, a possibility, a total of forty-five years, correct?

A. Yes, sir.

Q. But somehow you got it in your mind you were going to get fifteen years, because the Judge told you you were?

A. He says that I could get up to thirty-five or forty years.

Q. Okay. Where did the fifteen come in?

A. Said that — Mr. Marshall had sat down at the table with me and told me that if I would cop — that he would probably give me five years on each.

Q. Okay. So, he comes to you and says "The prosecutor is going to recommend five years on each of these charges", correct?

A. Yes, sir.

Q. But the Judge could run them

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wild or could run them consecutive of concurrent, correct?

A. Yes, sir.

Q. And so, you knew that?

A. Yes, sir.

Q. And, you thought that was a pretty good deal in view of the range of the penalty, correct?

A. Yes, sir.

Q. And, you also knew that you didn't have to take that deal, didn't you?

A. I didn't really know, no.

Q. You thought you had to?

A. Yes.

Q. Did he force you to?

A. No.

Q. Did he make you sign?

A. No, sir.

Q. Did he make you plead guilty?

A. No, sir.

Q. Did anyone make you plead guilty?

A. No, sir.

Q. Is this your signature, Mr. Raley?

A. Yes, sir.

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Q. Do you recall signing this document? Would you like a few minutes to look it over?

A. (Witness looks over document.) That's my signature.

Q. Did you, in fact, sign this document?

A. Yes, sir.

Q. Do you have any trouble reading this, Mr. Raley?

A. No, sir.

Q. Do you understand — When you read a sentence here, do you understand the sentence?

A. Yes, sir.

Q. Do you recall reading this document before you signed it?

A. No. sir, I just signed it.

Q. Without reading it?

A. I seen where it had "Enter of guilty plea of One, Two and Three" something like that. It was written out. Seems like I remember reading that, but as far as the whole page or nothing like that, no, I didn't read that.

Q. Someone just shoved the document in front of you and said "Sign here", and you signed there?

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A. Well, he just told me that I would probably get it dropped down; it would be, probably, fifteen years, and

chances was I could get it dropped down to five years, and so, I signed the paper.

Q. And you felt that was a whole lot better than getting the forty-five, correct?

A. Yes, sir.

Q. Well, how would you have gotten the forty-five?

A. Like I said, he just gave it to me. I don't know.

Q. Well, did Mr. Marshall say "We're either going to — you can either sign this and say you're going to get five, or don't sign it and we'll give you forty-five? It that how it was?

A. He just said that if I would just sign that paper that my chances of getting five years would be good. That was all he told me.

Q. You recall that specifically?

A. To the best of my knowledge, yes.

Q. Do you remember standing in front of the Judge and the Judge asking you some questions?

A. He asked me was that my signature and I had told him "Yes". He asked me was I forced by

anyone to sign that document or has anyone promised me anything, and I says "No". He wanted to know if I was under any intoxicants or medication or anything, and I said "No".

Q. And, that was the whole conversation?

A. Yes, sir.

Q. Okay. You have recited to us the complete conversation between yourself and Judge Oldham?

A. Yes, sir.

Q. And, you haven't left out any details?

A. Just other than he read out my charges and tell me what I could — the chances of the time I could be getting,

but after I — after I signed the — after I signed the paper, then that's when he said "I sentence you to fifteen years in the Kentucky State Reformatory, but be running concurrent, a total of five years".

Q. Do you know for a fact, Mr. Raley, that Judge Oldham did not say to you, "You have a right to a trial"?

A. I can't really say for a fact, no.

Q. Okay. So, it's possible he could have said that?

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A. I would say chances are "Yes".

Q. You just don't recall it?

A. No, I'm not saying that. I don't remember him saying anything like that.

Q. He could have, though.

A. Possible.

Q. And, it's also possible that Judge Oldham could have said "You have the right to cross examine witnesses"?

A. It's possible.

Q. And, it's also possible that he could have said "You have the right to call witnesses on your own behalf"?

A. Yes, sir.

Q. It's also possible that he could have said "And, you don't have to testify against yourself"?

A. That's possible.

Q. So, what you have told us about the conversation between you and Judge Oldham is just what you remember Judge Oldham saying, correct?

A. Yes, sir.

Q. And, you're not representing to this Court that that was the entire conversation and nothing else was said?

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A. Sir?

Q. You're not representing to the Court that what you've told us is the entire conversation between you and Judge Oldham and nothing else was said?

A. I'm just saying everything that I recall.

Q. Now, you are telling us. Mr. Raley, that you were sent that same day?

A. Sir?

Q. You were sent that same day that you pled?

A. No, I remained in jail and then, and I went to — I was sent to the reformatory, is that what you're talking about?

Q. No, what I'm asking you is, the day that you pled guilty, were you also sentenced that same day?

A. I believe I was sentenced — No, I don't believe I was sentenced that day.

Q. Okay. You waited in jail for some time?

A. I remember — I think the final sentencing day was like January 2nd or 3rd of '80.

Q. You came back into Court, then?

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A. Yes, sir.

Q. All right, for sentencing, and you were sent to the reformatory?

A. Yes, sir.

Q. How long did you spend in the reformatory, total penitentiary time, wherever were?

A. Thirteen months.

Q. And, there were —

A. Nine months, I had four in jail. Around nine months.

Q. Nine months, and you circulated with other prisoners there, correct?

A. Yes, sir.

Q. Some of which were — had been convicted by jury trials, correct?

A. Yes, sir.

Q. You came back and were convicted in 1981? Correct?

A. Yes, sir.

Q. And, your attorney was Thom Clay?

A. Yes, sir.

Q. And, you are stating to the Court that Thom Clay told you that you were charged as

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a Persistent Felony Offender in the First Degree?

A. Yes, sir.

Q. And, did he also tell you what that meant?

A. I already knew what it meant; ten flat years.

Q. You learn a lot about the criminal justice system and the way the courts work when you're in prison, don't you?

A. I'd say you could, yeah, if you want to take the time, yeah.

Q. You're circulating among prisoners who have all gone through the court system, correct?

A. Yes, sir. Yes, sir.

Q. And, they all have their story to tell, don't they?

A. Yes.

Q. And, you come back and Mr. Clay tells you "I can get this PFO, One, reduced to a PFO, Two", is that what he tells you?

A. Yes, sir.

Q. "But, if you don't want that, we can go to trial", correct?

A. Yes, sir.

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Q. And, you didn't want a trial?

A. No, sir, not a PFO, One.

Q. You didn't feel that your chances were good before a jury, correct?

A. No, sir.

Q. And, you didn't particularly care to call any witnesses or put on a defense, correct?

A. I never was informed of all that, no.

Q. Well, you just told us you didn't want a jury trial.

A. Well, that part, yes, but as far as the witnesses, I never had any myself. So —

Q. You didn't have any witnesses?

A. No, sir.

Q. Did Mr. Clay know that?

A. I'm sure he did, yes.

Q. Did you talk to him about it?

A. Yes, sir.

Q. Did you tell him about the case?

A. Yes, sir.

Q. He knew all the facts as you knew them?

A. Pretty much so, yeah

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Q. And you didn't give him any names of any witnesses that he could call?

A. No.

Q. Is this your signature, Mr. Raley?

A. Yes, sir.

Q. Do you recall signing this document?

A. Yes, sir. That was the one I — I think that was the one I signed out in the hallway, out in the lobby.

Q. And, the charges, as they are listed on this sheet are what, can you read those?

A. Burglary, Three; Persistent Felony Offender, Two; Complicity.

Q. And, RSP?

A. Yes, sir.

Q. It does say "PFO, Two" under "Charge", correct?

A. Yes, sir.

Q. Now, both of these pleas–were regular pleas as opposed to Alford Pleas. Do you know what an Alford Plea is, Mr. Raley?

A. No, sir.

Q. Okay. During both of these

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pleas, you had to admit to the Court that you actually committed the crime, correct?

A. Right.

Q. And, you did that, did you not?

A. Yes, sir.

Q. In fact, Mr. Clay got one of these charges completely dismissed for you, didn't he?

A. I don't recall that.

Q. Okay. Let me show you this again. Let me see if this refreshes your memory, where it says "Dismiss Complicity and RSP"?

A. I didn't remember that. I never seen that there. The only thing I remember seeing is what I signed and I —

Q. In fact, you pled guilty to Burglary, Three, five years — enhanced to five years on a PFO, Two, correct?

A. They told me that it would be just like an ordinary five year sentence —

Q. All right.

A. — if that's what that means, yes.

Q. And, you felt that that was a good deal, correct?

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A. Yes, sir.

Q. And, you went along with it?

A. Yes, sir.

Q. And, nobody forced you to?

A. No, sir.

Q. And again, in going before Judge Hopson, did he ask you — Well, you've already told us that he told you about not being forced and not being intoxicated, correct?

A. Yes, sir.

Q. And — But, you're not representing to the Court that that is the entire conversation between you and Judge Hopson, are you?

A. I believe that — I can't recall that, but I'm sure that if I was aware of all them facts as well as I know now, I would, like, on my first felony, I probably would have took a jury trial by it being my first felony offense and I would have probably got some play on that, but I wasn't sure. I wasn't taking no chances, but on him, no, I can't recall.

Q. I'm going to repeat my question, Mr. Raley, and I want you to listen carefully. You're not representing to the Court that when you pled before Judge Hopson that the facts as you recited them to us represents the entire conversation between you and Judge Hopson, are

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you?

A. He could have said more.

Q. He could have said more?

A. Could have, yes.

Q. He could have said "Mr. Raley, you have a right to a jury trial", right?

A. Correct.

Q. He could have said "Mr. Raley, you have a right to cross examine witnesses and call witnesses on your own behalf" couldn't he?

A. I don't believe that. I mean, I don't remember hearing that, no, sir.

Q. But he could have said it?

A. Yes, yes, he could have.

Q. And, he also could have said "Mr. Raley, you have the right to remain silent", correct?

A. Yes, sir.

Q. So, what you have told us is just what you recall and not necessarily just exactly what happened?

A. Yes, sir.

Mr. Bybee: That's all the questions I have.

The Court: Thank you, Mr. Raley. Anything else, Counsellor?

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Mr. Wettle: No, Your Honor.

The Court: All right, sir, you may step down. Anything further from the Defendant?

Mr. Wettle: Mr. Raley is our only witness, Your Honor.

The Court: Any witnesses for the prosecution?

Mr. Bybee: I'd like to call Thom Marshall, Your Honor.

The Court: See if Mr. Marshall is outside.

The witness, THOM MARSHALL, after having been first duly sworn, was examined and testified as follows:

(Direct - Mr. Bybee)

Q. Mr. Marshall, you are an Assistant Commonwealth Attorney, now?

A. Yes, I am.

Q. And, at one time, were you also a Public Defender?

A. I was.

Q. Did you represent Ricky Raley?

A. I do not recall. Looking at this gentleman here I assume is Mr. Raley, I don't have any specific recollection of representing Mr. Raley.

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Q. Do you recognize your signature?

A. Yes.

Q. Is that, in fact, your signature?

A. Yes, it is.

Q. Would you please tell us what that document is?

A. This was a form plea of guilty that was used back in, I guess, 1979. Let's see when I signed it. In 1979. I had looked at it briefly prior to taking the stand. I recognize not only my signature but my writing on the — well, it says "Page 115", but I mean the first page, it says "Plea of Guilty" with the style of the case.

Q. Would you tell us what the function of that document is?

A. It was a form which the defense lawyer would go over with his client prior to his coming before the Court on a plea of guilty. It was to advise the Defendant of all of his constitutional rights and to make a written record of the fact that that had been done.

Q. The part that contains your signature, that specific page, would you tell us what that says, please?

A. Yes, this is a Certificate of —

Mr. Wettle: Judge, I'm going

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to object at this point as to the introduction of this specific document against Mr. Raley. I believe Mr.

Marshall has already said that he has no specific recollection of Mr. Raley. Unless Mr. Marshall relates specifically what occurred between him and Mr. Raley and what he related to Mr. Raley in regards to this specific document. I don't believe he can testify in general as to what this document looks like or consists of. There's been no foundation laid for this. We're dealing specifically with what occurred on, I believe, October 29th, in 1979 in Division Two of Jefferson Circuit Court; not with Mr. Marshall's general practice of law as a public defender or with the general practices of the court system in 1979.

The Court: I expect he may testify regarding his own Certificate or whatever that is, there.

Q. Would you read that to us, Mr. Marshall?

A. Yes, it's a Certificate that I signed on the 29th day of November, 1979 in which I certified that I was the attorney of record for Ricky Harold Raley, that I had read and fully explained to Mr. Raley the allegations contained in the Indictment; that I

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had fully explained his constitutional rights to him; that to the best of my knowledge and belief, the statements and representations and declarations made by Mr. Raley in the foregoing Petition on the Plea of Guilty, are accurate and true; that the Plea of Guilty that Mr. Raley entered was with my understanding of the facts as related to me by the Defendant, was consistent with my advice to him, and that it was my opinion that the Plea of Guilty as offered by Mr. Raley was voluntarily and understandingly made, and I recommended to the Court that his Plea of Guilty be accepted on behalf of Mr. Raley, and I signed this document in open

Court November 29th, 1979 in Division Two. Judge Oldham, I believe, was then the Judge.

Mr Bybee: Thank you. That's all.

The Court: Cross examination, sir?

Mr. Wettle: I just have a few questions of Mr. Marshall.

(Cross - Mr. Wettle)

Q. Mr. Marshall, how long were you a public Defender?

A. Six and a half years.

Q. And, approximately how many clients did you represent? Just give us a rough figure?

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A. I really wouldn't know. We had — Our caseloads varied considerably, and there was a significant change in the Court's structure during that six and a half years. I would estimate hundreds, if not thousands, of clients.

Q. And how many Guilty Pleas would you have entered in Circuit Court?

A. Many. Well over — in the hundreds, I'm sure.

Q. And, you don't have any specific recollection of Mr. Raley, here, do you?

A. To look at them, you know, some clients who I see, I recognize their face. I don't recognize Mr. Raley's face that much. I've got to be real honest with you. I don't. There was — Some of the cases that I had, there was something unusual about that would stick in my memory. I did not have an opportunity to look at my file which would still be in the Public Defender's Office. If I were able to look at that, I'm sure I could refresh my recollection as to the specifics of this particular case.

Q. And, it's not uncommon for you to see someone you perhaps represented eight years ago, and not remember anything about them?

A. That's entirely possible, yes.

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Q. And, this Certificate that's attached to this form that you say you put your signature on, that's the usual Certificate that's attached to the end of these Guilty Plea forms, isn't it?

A. The form that was being used at that time, that's correct. I would point out I also filled out the first part.

Q. Okay.

A. Other than where Mr. Raley signed.

Q. And, it was your normal course of business to fill out that certificate.

A. We filled that out. We would fill it out in open court, normally, prior to the entry of the plea.

Q. Sometime you would fill it out in the hallway?

A. Normally, you'd just sit down, and — I would normally sit down in the Court Room and do it.

Q. Do you recall specifically on the 29th of November filling out this Certificate, in 1979?

A. No, but that is my signature.

Q. You say in this Certificate that the plea — that he was pleading guilty pursuant to your advice?

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A. That's correct.

Q. Can you tell us what your advice was in regards to that plea of guilty, what evidence they had against him, why you were advising him to plead guilty?

A. I cannot recall all the details of the case. In looking at the Plea Sheet, I note that Mr. Raley was charged with two counts of Burglary, First Degree, which at that time was a Class B felony; that our Plea Agreement was to amend those two B felonies to D felonies and to recommend a total of five years on each of three counts of Burg-

lary, Third, for a five year concurrent sentence. I moved for probation, but in Division Two, nobody walks away.

Q. And, as a defense attorney, you've tried many Class B felonies, didn't you?

A. Yes.

Q. And won acquittals, in fact, on quite a few of those, at least?

A. I had a modest success rate.

Q. And, as a prosecutor, you've tried Class B and A felonies, haven't you?

A. Yes.

Q. And, lost some of those?

A. It's hard to believe, but it's

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true.

Q. And just because a person would be charged with a Class B or A felony, which carries, perhaps ten to twenty or twenty years to life, the severity of that would not be the sole basis of your advising a person to plead guilty, would it?

A. No, I'd never — On one occasion, I urged one Defendant to plead guilty. Without exception, the rest of the time I left it up to them. It was their decision. It's my feeling. It's their decision.

Q. What about — One of the most important bases is usually without the disparity of the punishment likely, but would it be, you would agree, the strength of the Commonwealth's case?

A. Certainly.

Q. If they had a very weak case even though it was a very severe punishment, you wouldn't urge a person to plead guilty, would you.

A. As I said, I only recall one person in my six and a half years, urging them to plead guilty. The rest of the time, I explained it to them and told them it was their decision.

Q. And, at this time, you do not recall the strength of the Commonwealth's case against Mr. Raley, do you?

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A. Not without looking at more of the — looking at the file.

Q. Do you recall any of the proceedings on the 29th of November, 1979 before Judge Oldham, specifically with Mr. Raley?

A. Again, without looking at a transcript or my file, I can't tell you, honestly, that I recall that.

Q. In looking at this Plea Sheet, there's a recommendation of five years and no stand on probation, is that correct? Is that the position the Commonwealth took?

A. Whatever is on there. It was five years concurrent to serve. I think it was to serve, isn't it?

Q. I believe you said you made a motion for probation, though?

A. As I recall, it indicates in there that my motion for probation was denied or it's possible — Again, you'd have to look at the file, which would speak for itself — it's possible that David O'Brien from our office stood in at sentencing. I'm not — that was sometime after the 29th of November.

Q. And other than the facts contained on this document, you really don't remember any of the

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facts in the case, do you? You don't remember Mr. Raley or any facts of the case of the guilty plea, do you?

A. As I recall, Mr. Raley was charged in all three instances with breaking into garages, and I think the state of the law back at that time was that an attached garage was part of the dwelling and that was the reason for the two Burglary, One's. That's —

Q. Other than that, do you remember anything?

A. No.

Q. How many of these sheets do you think you've filled out over the years as a Public Defender?

A. I couldn't give you an honest guess, sir. I don't know. Many.

Q. Do you recall—do you recall anything specifically about this sheet besides recognizing your signature and your handwriting?

A. Just, you know, that that form is something that I went over. Before I would sign anything like that, I would have very carefully gone over and done what it says that I did.

Q. Do you recall, specifically, where you sat down with Mr. Raley and what he said in reply to you, anything such as that?

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A. I recall nothing unusual out of, you know, of that situation.

Q. Do you recall anything usual about that?

A. I don't recall anything unusual about it at all.

Q. Anything usual?

A. Well, what I'm talking about was, if there had been something unusual to come up, fact situation; for instance, many times I end up going to trial as a Public Defender when I would have preferred that my client would have pled, but then when they decided not to plead, then we went

to trial. In this case, obviously, Mr. Raley pled and there was nothing unusual about that.

Q. And, nothing about it specifically stands out in your mind, at this time?

A. No, there's not, not without being able to look at my notes and the case file.

Mr. Wettle: Thank you. That's all the question I have.

The Court: Anything else from the prosecution?

Mr. Bybee: No, sir.

The Court: All right. I guess I'll ask you one question, Mr. Marshall.

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Question By The Court:

Q. That's only that your testimony is that you did certify on that date that is your signature, that you did certify on that date that you explained these rights to the Defendant?

A. That is correct, Your Honor.

Q. And, that he understood them and—

A. Yes, sir.

The Court: All right. Anything else?

Mr. Wettle: Judge, I have just two brief comments to make.

The Court: Well, I don't know if the prosecution has another witness?

Mr. Bybee: No, sir.

The Court: All right, I'd like to hear comments.

Mr. Wettle: Judge, just briefly, we cite the controlling case law in our motion, and the situation we have here was cited to observe, specifically in Boykin, when they refer to the fact that we have a silent record;

that there's no written record on an exchange between the Court and the Defendant, in which the

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Court determines that the plea is knowing and voluntary, then the Courts of Appeal and the Courts of Review, at this point is acting now as Court of Review, are reduced to memory of what actually occurred. We have two memories here. We have the memory of Mr. Raley. We have the memory of Mr. Marshall who exhibited normal memories of what occurred approximately nine years ago and seven years ago. Mr. Raley does not recall being read his rights at either of those occasions. He candidly acknowledges the fact that perhaps the Judge did read him his rights. He doesn't recall it. There's no records to indicate in either of the files that the Judge personally specifically, read him he rights, as is the normal practice in this Court in the Jefferson Circuit Court at this time, and it seems to be confirmed by *Gordon* v. *Alabama*. There is an indication in the file that a Guilty Plea Sheet was filled out by Mr. Marshall. Mr. Raley doesn't remember signing that. He remembers the offer that was made. He doesn't remember reading over the sheet. Mr. Marshall remembers that it was the standard practice to sign these sheets back then and it still was the same practice. However, his

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memory, he cannot recall anything specifically about this case. He cannot recall Mr. Raley, specifically. He can't really recall any details about this case, whatsoever; certainly not to fault Mr. Marshall or Mr. Raley. That's what would be expected, and that's why the Supreme Court of the United States and the Supreme Court of Kentucky and the appellate courts of Kentucky have held that there must be written records. Otherwise, we're reduced to processes

such as this. In response to some of "Mr. Bybee's questions in regard to "that you got a good deal" or "that you didn't get a good deal", I don't really believe that's relevant to the determination of whether a conviction entered is constitutionally valid; whether that condition is knowingly or voluntarily made. We are challenging these convictions, not on the basis of whether he got good deals or bad deals. We're challenging them on whether the Court fulfilled its constitutional duty in protecting Mr. Raley — protecting his constitutional rights by determining from him at the time whether his plea was knowing and voluntary; whether he got one day in jail or he could have gotten one hundred years in jail is of no consequence if a person's constitutional rights are at stake. Whether

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he got a good deal or a bad deal, I believe, is of no relevance to this proceedings. What is of relevance is, did he know what he was doing? Did he know what he was giving up? We believe on the basis of the evidence entered today, that is a very open question. At this point, from the testimony of Mr. Raley and the testimony of Mr. Marshall, perhaps, he was and perhaps he wasn't. Since this is an open question, we believe that under *Johnson* v. *Erst*, in which the United States Supreme Court said that every Court has a duty to make sure that all pleas are knowingly and voluntarily entered, that this Court should make a determination that these pleas were not knowingly and voluntarily entered, therefore, should grant our motion to suppress Count 2 of this Indictment.

The Court: Mr. Bybee?

Mr. Bybee: Judge, as far as the 1979 conviction goes, we feel that, first of all, the Defendant should not even be able to raise that issue since they pled guilty to being a Per-

sistent Felony Offender in the Second Degree in 1981, at which time, at which time you must admit that you have been convicted of a prior felony, so that any attack would have been waived in 1981 to

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that 1979 conviction and they shouldn't even be heard on that issue. Second of all, looking at the record itself, you have a document signed by the Defendant on which it advises him of his rights and he tells us that he reads, he has an eleventh grade education. There's no problem there. He was represented by counsel and we have a certificate of his counsel, an officer of the Court, stating — which he signed on that date — that he has, in fact, advised him of his rights. He was sent to the penitentiary, and I submit to the Court that one can gain quite an education from the penitentiary about the Court system. He comes back the second time and he tells us again that he doesnt' know he has a right to a trial, despite being advised of that fact the first time he came to Court. Mr. Raley loses much credibility, Judge, we would — He has not stated that that was the entire conversation. He has told us quite frankly that his memory is faulty; that he's not sure, that he doesn't remember — it could have happened. So, he has not even come forward with evidence stating with assurity that those rights weren't given to him. On that basis, we have, number one, a Defendant who has failed to even initially meet his burden of proving

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that the convictions were irregular, and second, you have a contemporaneous document which shows that Mr. Raley was, in fact, advised of his constitutional rights, and for those reasons, Judge, we would ask that the Court overrule

the Defendant's motion and admit both convictions for all purposes connected with the trial.

Mr. Wettle: Judge, just a brief response to the first assertion that we should be barred. I believe he's citing *Alvie* v. *Commonwealth* in regards to the 1979 case.

The Court: He isn't citing it, but he said — he said, in effect, what Alvie said.

Mr. Wettle: Okay. Well, Alvie deals with the situation where someone was convicted of a Persistent Felony Offender and then attempted to come back and file an action under 1142 to overturn the Persistent Felony Offender conviction, and what Alvie said was issued at the same time as Gadd, what Alvie said is the procedure that we follow is that prior to trial, one must file a challenge to the Persistent Felony Offender portion of the Indictment. In one files — failed to file, in Gadd, then therefore, if they're convicted of PFO or pleads to PFO after that trial, you waive your challenge.

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You can't come back on 1142 and say "I now come back and challenge what I was convicted of". So, that's what we did here. We filed the pre-trial motion. We're challenging it prior to trial and prior to entering the plea. So, Alvie doesn't apply. We're not coming back under 1142.

The Court: Counsel is saying you're trying to get a second bite of the apple, and that you had your bite at the apple in 1982, I believe.

Mr. Wettle: "Well, Alvie gives the situation —

The Court: I understand.

Mr. Wettle: You know, that's —

The Court: I understand what your contention is, sir.

Mr. Wettle: That's all I have to say.

The Court: All right, sir. On the basis of the record, the evidence and the totality of the circumstances shown at this hearing, the Court finds that the Defendant intelligently pled guilty in both of these prior instances, with full knowledge of the nature and consequences of a plea of guilty, and that the record is now complete

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to that extent, and that therefore, the motions to dismiss those or to vacate those final sentences or not to utilize them in the present proceedings are overruled. Now, with thta in mind, and the present case before us, what is the pleasure of the Commonwealth?

Mr. Bybee: Do we have a negotiated plea?

Mr. Wettle: Yes.

(Thereupon The Proceedings Were Concluded.)

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REV 6/82

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District: Western District of Kentucky	
Name: Ricky Harold Raley	Prisoner No.: 82623	Docket No.:

Place of Confinement:
Kentucky State Reformatory- P.O. Box 188, LaGrange, Kentucky 40032

Name of Petitioner (include name upon which convicted): Ricky Harold Raley

V.

Name of Respondent (authorized person having custody of petitioner): Al C. Parke, Warden

The Attorney General of the State of: Hon. Fred Cowan- Commonwealth of Kentucky

PETITION

1. Name and location of court which entered the judgment of conviction under attack: Jefferson Circuit Court, Division 15, Hall of Justice, Louisville, Kentucky 40202

2. Date of judgment of conviction: June 4,1987

3. Length of sentence: Ten (10) years

4. Nature of offense involved (all counts): Second degree robbery, and first degree persistent felony offender.

5. What was your plea? (Check one)
   (a) Not guilty ☐
   (b) Guilty ☒
   (c) Nolo contendere ☐

   If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. Kind of trial: (Check one)
   (a) Jury ☐
   (b) Judge only ☒

7. Did you testify at the trial?
   Yes ☒ No ☐

8. Did you appeal from the judgment of conviction?
   Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court Kentucky Court of Appeals

(b) Result Affirmed

(c) Date of result April 22,1988 (unpublished opinion)

(d) Grounds raised THE TRIAL COURT ERRED WHEN IT RULED THE CONVICTIONS ADMISSIBLE. UNDER THE CORRECT FEDERAL TEST, THE COMMONWEALTH DID NOT MEET ITS BURDEN OF SHOWING VALIDITY BY CLEAR AND CONVINCING EVIDENCE.

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10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Kentucky Supreme Court

(2) Nature of proceeding Motion for discretionary review of the Kentucky Court of Appeals decision affirming conviction.

(3) Grounds raised Whether the trial court and the Court of Appeals applied the correct standard to the facts developed in determining the validity of prior convictions used for persistent felony offender enhancement purposes.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result Motion denied

(6) Date of result June 21,1988

(b) As to any second petition, application or motion give the following information:

(1) Name of court None

(2) Nature of proceeding

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of court None

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(d) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐
(2) Second petition, etc. Yes ☐ No ☐
(3) Third petition, etc. Yes ☐ No ☐

(e) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
(b) Conviction obtained by use of coerced confession.
(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privilege against self-incrimination.
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Conviction obtained by a violation of the protection against double jeopardy.
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
(i) Denial of effective assistance of counsel.
(j) Denial of right of appeal.

A. Ground one: PETITIONER WAS DENIED FEDERAL DUE PROCESS OF LAW BY PROCEDURE OF THE TRIAL COURT IN ALLOCATION OF THE BURDENS OF PROOF AND PRODUCTION USED IN PERSISTENT FELONY PROCEEDINGS FOR PUNISHMENT ENHANCEMENT.

Supporting FACTS (tell your story *briefly* without citing cases or law):

See Memorandum (attached hereto).

B. Ground two:

Supporting FACTS (tell your story *briefly*, without citing cases or law):

C. Ground three: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

D. Ground four _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

Were presented

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Hon. Mark Weattle , Public Defender - Jefferson District, 200 Civic Plaza, 719 W. Jefferson St., Louisville, Ky. 40202

(b) At arraignment and plea Same as above

(c) At trial Same as above

(d) At sentencing Same as above

(e) On appeal Hon. J. David Niehaus, Deputy Appellate Defender of the Jefferson District Public Defender, 200 Civic Plaza, 719 West Jefferson Street, Louisville, Kentucky 40202

(f) In any post-conviction proceeding

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
Yes ☒ No ☐ sentenced to term of 5 years on Rob.II, enhanced to term of 10 years via PFO I.

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☒ No ☐
(a) If so, give name and location of court which imposed sentence to be served in the future: Jefferson Circuit Court, Louisville, Kentucky

(b) Give date and length of the above sentence: October 8, 1981 - 5 year sentence. Note; must serve remainder of this sentence pursuant to parole violation.

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

7/10/89
(date)

Ricky H. Raley
Signature of Petitioner